IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.22772 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BHARATBHAI B MEHTA
Versus
SECRETARY,
URBAN DEVELOPMENT & URBAN HOUSING DEPARTMENT

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Appearance :
MR VK JOSHI for Petitioner(s) : 1,
MR VINAY S PANDYA, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2.
MR DN VAKIL for HL PATEL ADVOCATES for Respondent(s): 3

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 21/03/2007
ORAL JUDGMENT

(1) Heard the learned advocates appearing for the respective parties. Taking into consideration the narrow scope of controversy between the parties and the fact that the pleadings are complete, the petition is taken up for final hearing and disposal.

RULE. The learned advocates appearing for the respective parties are directed to waive service.

(2) The petition has been filed praying for following reliefs:

"8. Therefore, the petitioner prays that

A) Your Lordships may be pleased to admit the petition;

B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate Writ, order or direction in the nature of mandamus to the respondent No.3 Savarkundala Municipality an further be pleased to direct them to renew the lease of land in possession of the petitioner bearing Survey No.452/19 admeasuring 28176 sq.yd. of city Savarkundala as well as adjoining land admeasuring one acre 2 guntahs as per the consent decree passed on the basis of arbitration award;

C) Pending hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondent No.3 Municipality to renew the lease of land in question forthwith in favour of the petitioner;

D) Any other and such further reliefs which may be deemed fit and proper may be granted in the interest of justice."

(3) The undisputed facts are that land admeasuring 28176 sq. mtrs. falling within gamtal of Savarkundala was given to the petitioner-Company on lease for a period of 30 years in 1922. Subsequently, District Collector, Bhavnagar vide order dated 06.09.1955 gave approval to respondent No.3-Municipality to grant lease of land and the lease so granted by the Municipality expired on 31.03.1982. It appears that in January 1977, during subsistence of the lease granted by the Municipality, the petitioner sought permission to put up some construction on the leased out land and because of the said application a dispute arose between the petitioner and the respondent-Municipality.

(4) The dispute was referred to an arbitrator who declared his award on 23.03.1978. The award of the arbitrator became a decree on 26.04.1978 in terms of the decree made by the Court of Civil Judge (S.D.), Bhavnagar.

(5) In the meantime, the State Government vide order No.NDL/4589-2728-M dated 23.10.1991 extended the lease period for a period of 30 years w.e.f. 01.04.1982. The said order came to be challenged by respondent-Municipality by way of Special Civil Application No.1968 of 1992. The petition came to be rejected in absence of the advocate concerned vide order dated 20.07.2002. The restoration application being Misc. Civil Application (Stamp) No.504 of 2003 came to be rejected on 06.07.2005.

(6) The petitioner thereafter wrote number of letters to the respondent-Municipality to comply with the consent decree passed by the Court of Civil Judge (S.D.), Bhavnagar on 26.04.1978. On 22.08.2005 lease rent of Rs.12,976/- was also deposited by a demand draft by the petitioner with the respondent-Municipality. However, it is the grievance of the petitioner that the respondent-Municipality has failed to accept the lease rent in terms of the decree. On the other hand the respondent-Municipality has raised bills for arrears of rent

amounting to Rs.34,20,560/- for the period ending on 31.03.1991. The State Government vide order dated 23.10.1991 directed that the petitioner should pay arrears of rent in terms of the consent decree, which have duly been paid by the petitioner but yet, according to the petitioner, respondent No.3-Municipality has deliberately omitted to comply with the consent decree.

(7) As the record reveals notice was issued on 04.11.2006 and thereafter the respondent-Municipality was granted time repeatedly and subsequently affidavit-in-reply dated 31.01.2007 came to be filed by Chief Officer of respondent No.3-Municipality. However, as the said affidavit-in-reply was not found to be correct the respondent-Municipality was granted further time. Ultimately, on 21.02.2007 the president of the respondent-Municipality has tendered affidavit-in-reply.

(8) The principal ground, on which the petition is resisted on behalf of respondent No.3-Municipality,

is that vide resolution dated 21.12.1982 the petitioner must pay rent at the rate recorded in the said resolution and secondly, that the State Government has no right to lease out the land which has vested in respondent No.3-Municipality. In Paragraph No.2 of the affidavit dated 21.02.2007 it is stated:

> “2. I say that the document, Annexure 'E' – decree of the Civil Court produced by the petitioner herein suggests that a decree has been passed pursuant to the terms of compromise and award of the arbitration only as to issue of granting permission of construction to be given by the Municipality to the petitioner. I say that nothing more or less has been mentioned in the decree and therefore, the petitioner cannot insist the Municipality to travel beyond the terms and scope of the decree.”

(9) Thereupon the attention of the learned advocate representing the respondent-Municipality was invited and asked to go through the entire decree, and after obtaining instructions make appropriate submission. The Free English Translation of the decree dated 26.04.1978 records:

(i) The possession of the land by the company is a legal possession and the company is entitled to have the lease renewed; the lease agreement is not terminated. The Municipality is bound to renew the lease agreement and bound to do so for the period stated.

(ii) The lease is required to be renewed. The existing lease rent of Rs.500/- for 28176 sq. mtrs. of land is increased to Rs.710/- p.a. Another parcel of land admeasuring 1 acre and 2 gunthas, which has been leased out at Rs.40/- p.a., shall be increased to Rs.60/- p.a. The Municipality shall renew the lease for a period of 30 years at the aforesaid enhanced rate;

(iii) It is open to the Company to put up construction for its own use on the leased land. The provisions of the Rent Act are not applicable to the Municipality and hence, the Municipality is bound to grant permission for the construction;

(10) The next paragraph is in relation to the amount of fees and expenses for arbitration.

(11) In the aforesaid circumstances, the learned advocate for the respondent No.3-Municipality

prayed for time to consider the effect of the decree and do the needful in the matter as recorded by this Court on 15.03.2007. Today, the learned advocate for the petitioner states, under instructions of the Chief Officer, who is present in the Court, that the respondent-Municipality is not inclined to comply with the decree made by the competent Court.

(12) As noticed hereinbefore, the only ground on which the petition is being resisted is that the State Government is not entitled to extend the lease and that the Municipality is entitled to seek increase in rent as per its resolution dated 21.10.1982. None of the grounds are tenable. There is a consent decree which is in operation and which has not been either modified or set aside by a competent higher forum. In the circumstances, the respondent-Municipality is bound to obey the same. Whether the State Government can extend the lease or not is not an issue. There is a valid decree operating against the respondent-Municipality and the respondent-Municipality is bound to comply with the same.

Similarly, the subsequent Resolution dated 21.10.1982, on which reliance is placed by the respondent-Municipality, is also irrelevant in light of the consent decree dated 26.04.1978 which is to operate for a period of 30 years as recorded in the decree itself.

(13) In the aforesaid set of facts and circumstances of the case, it is apparent that respondent No.3-Municipality has acted in a most irresponsible and cavalier fashion. The Municipality cannot be permitted to flout a valid decree of a competent Court. The petition is required to be allowed and is accordingly allowed. Respondent No.3-Municipality is directed to comply with the decree dated 26.04.1978 within a period of fortnight from today, without waiting for a certified copy of this judgment and order. The learned advocate for the respondent No.3-Municipality is directed to forward a simple copy of this judgment and order so as to enable the respondent No.3-Municipality to comply with the directions made by this Court.

(14) The Chief Officer of respondent No.3-Municipality Shri Mehul J. Jodhpura, who is present in the Court, is directed to file an undertaking within a period of 03 (three) days from today that the directions made by this Court shall be complied by respondent No.3-Municipality without fail.

(15) Rule made absolute. There shall be no order as to costs. Direct service permitted.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*